IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

S.T.R. No. 46 of 2001
(Old No. 1761/1991)

M/s Rama Vision Ltd.
Having its factory at 2 Km. Kichha-Rudrapur Road
Kichha- 263148, District- Nainital …….Applicant

Vs.
The Commissioner of Sales Tax, U.P. ……Opposite Party

None for the Applicant.
Shri Sayeed Nadem, learned Standing Counsel for the respondent.

Hon'ble Prafulla C. Pant, J.

This revision was filed before the Allahabad High Court in the year 1991, and received by transfer by this Court, under Section 35 of U.P. Reorganisation Act, 2000, for its disposal.

The assessee is absent, even after being served sufficiently. Learned Standing Counsel is present.

Heard.

The question of law involved in this case is as under:-

1. Whether the assessee being a new unit which was granted exemption certificate under Section 4-A of Sales Tax Act, 1948, was not liable to pay any tax in respect of goods imported by him without obtaining the form- 31/form 32, and was wrongly demanded maximum security in violation of Section 28-A of the Act?

It appears that on 24.11.1991, during checking it was found that certain articles were being imported by the assessee through vehicle No. UHC 945 without form 31/form 32. Rather it was declared in form 35 that the goods were government goods. However, the goods were not the government goods and notices were issued to the assessee. It appears that the Assistant Commissioner (Check Post), Sales Tax, found that infact the imported goods was the raw material for the unit established by the assessee who had obtained eligibility certificate under Section 4-A of the Act i.e articles would be used by him and would not be

sold as such. It is also clear from the record that under Section 28-A of the Act, a security of Rs. 1,60,990/- was demanded for release of the goods which was challenged by the assessee before the Tribunal. Learned Tribunal found that there is no error in the order of the Assistant Commissioner (Check Post), as the assessee failed to show that the goods were accompanied by form 31/form 32 and the authority was not satisfied with the reply given by the assessee in response to the show cause notice, issued in this regard. The revisionist had taken the plea that he did not obtain form- 31, as he took the goods as the government goods. However, the authorities concerned have not accepted the excuse and this Court also finds no error in the decision of the authorities concerned or on the part of the tribunal for the reason that declaration in form 35, as to the government goods, was found to be not true. Once the goods are seized by the authorities concerned , it was for the assessee to show that how he is not liable to the assessment or the security demanded from him.

In view of the provisions, contained in sub-section (6) of Section 28-A of U.P. Sales Tax Act, 1948, where the officer making the search or inspection under this section finds any person transporting or attempting or abetting to transport any goods to which this section applied without being covered by proper and genuine documents referred to in preceding sub-sections and if for reasons to be recorded he is satisfied after giving such person an opportunity of being heard that such goods were being so transported in an attempt to evade assessment or payment of tax due or likely to be due under this Act, he may order detention of such goods. In view of said provisions, this Court is of the view that neither the Assistant Commissioner (Check Post) nor the Sales Tax Tribunal has committed any error in passing the impugned orders. The question aforesaid is answered accordingly in negative and the revision is dismissed.

(Prafulla C. Pant, J.)

Dt: 26.07.2005
Sweta